

II. Remarks

Claims 1-11 are pending in this case. Of these, claims 1, 4, and 8 stand rejected under 35 U.S.C. Section 102(e) as being anticipated by the disclosure of Brown, U.S. Patent No. 6,390,110 (“the ‘110 patent”); claim 9 stands rejected under 35 U.S.C. Section 103(a) as being obvious over the Brown ‘110 patent; claims 2, 5, 10, and 11 are rejected, also under Section 103(a), as being obvious over the combination of the ‘110 patent in view of Jones, U.S. Patent No. 6,010,176 (“the ‘176 patent”); claim 3 is rejected in the alternative under 35 U.S.C. Section 102(e) or 103(a) in view of the Brown ‘110 patent; claims 1, 3, 5, and 6 stand rejected in the alternative under Section 102(b) or 103(a) in view of the Brady ‘044 patent ; and claims 2, 5-7, and 9-11 are rejected under Section 103(a) as being obvious over the combination of Brady, U.S. Patent No. 5,137,044 (“the ‘044 patent”) in view of the Jones ‘176 patent. For the reasons specified, Applicants respectfully disagree with the rejections.

Turning first to the rejection of claims 1, 4, and 8 over Brown ‘110, Applicants’ submit that, even accepting, *arguendo*, the propriety of the examiner’s reliance on the Brown patent as a 102(e) reference, that reference fails to anticipate the claimed invention. On the contrary, Applicants note that Brown teaches a transportable collective protection system comprising, as shown below in the excerpted **FIG. 2**, an inner liner **21**, a separate “A”-frame structure **20** disposed without the interior liner **21**, and an outer shell **22** provided over the “A”-frame structure and out of contact with the inner liner **21**.

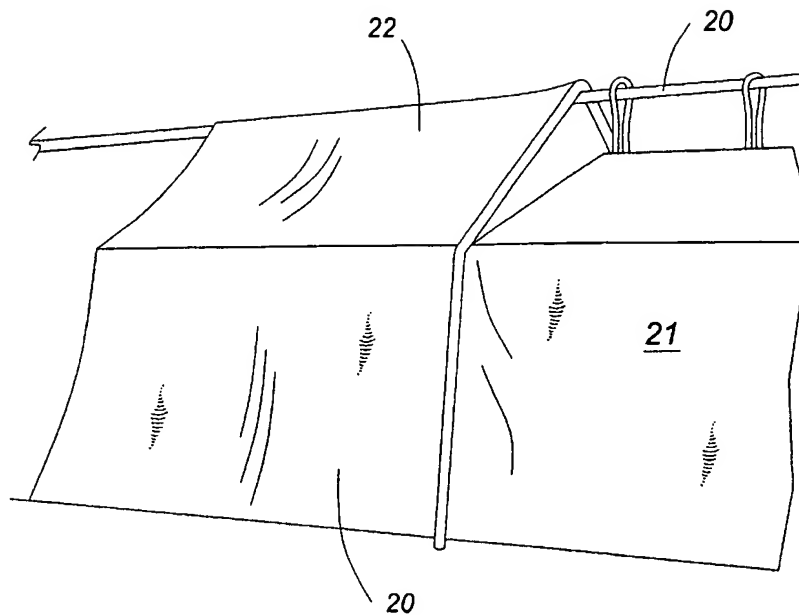


FIG. 2

As shown both in **FIG. 2** above, as well as in **FIG. 4**, reproduced below, the “A”-frame structure **20** is separate from, and does not define the shape of, the inner liner **21**. Indeed, Brown expressly states that the inner liner **21** has a form defined by inflation. *See* col. 6, lines 19-22.

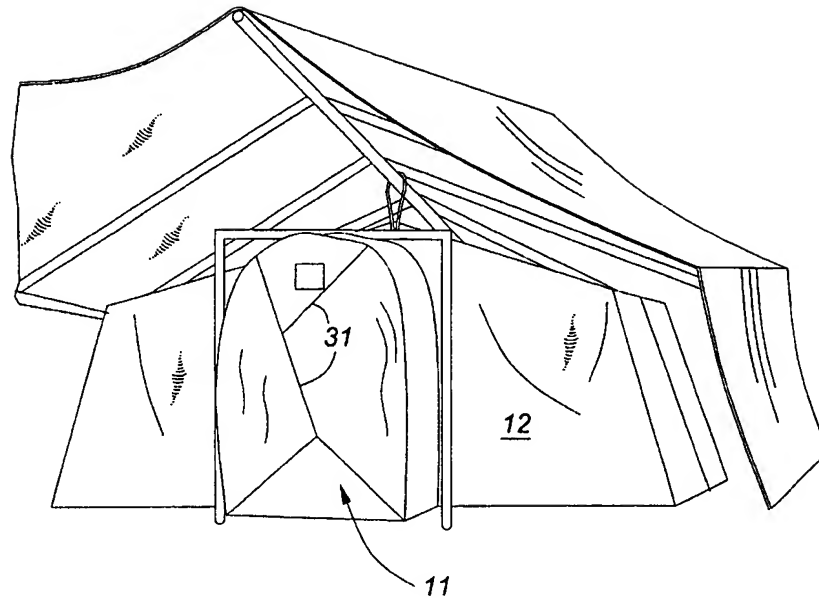


FIG. 4

The foregoing is quite evidently in marked contrast to Applicants' invention of claim 1, according to which there is provided a portable enclosure having a shape *substantially defined by* a frame with an enclosure exterior surface connected thereto, and a non self-supporting covering removably disposable over the enclosure exterior surface so as to be supported *by the enclosure*. Likewise, the teaching of Brown '110 plainly fails to anticipate the invention of claim 8, which recites a portable enclosure comprising a plurality of frame elements having a flexible material attached thereto to create a plurality of panel elements, and a flexible covering removably *securable* to the panel elements.

In light of the foregoing, Applicants respectfully submit that the rejection of dependent claim 4 is rendered moot. This fact notwithstanding, Applicants further note

that none of the art of record, taken alone or in any permissible combination, anticipates or makes obvious the invention of claim 4.

Turning next to the rejection of claim 9 over Brown '110, the examiner argues that that reference teaches all elements of the invention as claimed but for the enclosure exterior surface bearing a first camouflage pattern. To supply this deficiency, the examiner takes official notice "that it would have been an obvious choice of design...to have provided a camouflaged pattern on the exterior surface 21 [of the Brown apparatus]." Official Action, p. 4. Applicants respectfully disagree.

A *prima facie* case of obviousness *requires, inter alia*, some motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings." See MPEP § 2143; *see also In re Fine*, 5 USPQ2d 1596 (Fed. Cir. 1998); and *In re Jones*, 21 USPQ2d 1941 (Fed. Cir. 1992).

Instantly, the examiner's assertions fail in establishing a *prima facie* case at least for a want of motivation, since Brown teaches a transportable collective protection system which in all embodiments thereof disclosed comprises an outer shell 22 disposed over the inner liner 21. According to such a construction, there appears to be no incentive whatever to "have provided a camouflaged pattern on the exterior surface 21," since the same would necessarily be obscured by the superimposed outer shell 22.

As to the related, and necessarily subordinate rejection of claims 2, 5, 10, and 11 over the asserted combination of Brown '110 in view of Jones '176, Applicants respectfully submit that the same are rendered moot by the failure of the primary

reference to render obvious or anticipate any of the base claims 1 or 9, as explained above. This fact notwithstanding, Applicants' submit that none of claims 2, 5, 10 or 11 are rendered obvious by any of the art of record, taken alone or in any permissible combination.

Referring next to the rejection of dependent claim 3 as being anticipated or rendered obvious by Brown '110, Applicants respectfully submit that this rejection is rendered moot by the failure of the Brown patent to render obvious or anticipate the invention of the base claim (1). This fact notwithstanding, Applicants' submit that claim 3 is neither anticipated nor rendered obvious by any of the art of record, taken alone or in any permissible combination.

Turning next to the rejection of claim 1 over Brady '044, that claim recites a portable enclosure having a non self-supporting covering *removably* disposable over the enclosure exterior surface....” Such structure is neither taught nor suggested by Brady '044 which, contrary to the examiner's assertions, discloses a collapsible tent structure comprising, in one embodiment thereof, “a *permanent* second layer of material” in the form of sidewalls **22b**. Col. 10, lines 47-52 (*emphasis added*); *see also* **FIG. 18** (reproduced below).

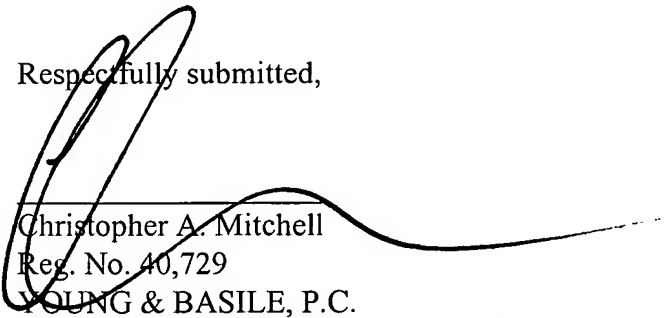
22b. Col. 10, lines 47-52 (*emphasis added*). Even accepting, *arguendo*, the existence of the argued motivation to combine the teachings of Brady '044 and Jones '176 in the manner suggested by the examiner, it is beyond peradventure that a *prima facie* case of obviousness requires that the references so combined teach all limitations of the claimed invention. For the foregoing reasons, such is evidently not the case here.

In light of the above, Applicants' respectfully submit that the rejections of dependent claims 7, 10 and 11 are mooted. Nevertheless, Applicants submit that none of these claims is anticipated or rendered obvious by any of the art of record, taken alone or in any permissible combination.

III. Conclusion

For the above-specified reasons, Applicants submit that the claims are in condition for immediate allowance. Of course, the examiner is invited to contact Applicants' undersigned counsel at (734) 662-0270 if he should have any questions respecting this paper, or if a telephonic interview might otherwise expedite the prosecution of this case.

Respectfully submitted,



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